

REMARKS/ARGUMENTS

Applicants have received the Office Action dated July 5, 2007, in which the Examiner: 1) objected to claims 1-13 and 21-29 because of informalities; 2) rejected claim 1 on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claim 1 of McIntyre et al. (U.S. Pat. No. 6,272,113, hereinafter "McIntyre") in view of Banga et al. (U.S. Pat. No. 6,895,429, hereinafter "Banga"); and 3) rejected claims 1-29 under 35 U.S.C. § 103(a) as being allegedly obvious under McIntyre in view of Banga. With this Response, Applicants amend claims 1, 21, 23 and 28. Based on the amendments and arguments presented herein, Applicants respectfully submit that this application is in condition for allowance.

I. CLAIM OBJECTIONS

The Examiner objected to claims 1-13 and 21-29 because of informalities. Applicants have amended claims 1, 21, 23 and 28 to correct these informalities. Accordingly, Applicants kindly request the Examiner to remove these objections.

II. REJECTIONS UNDER 35 U.S.C. § 103(a)

The Examiner rejected claims 1-29 under 35 U.S.C. § 103(a) as allegedly obvious under McIntyre in view of Banga. Applicants traverse this rejection. Claim 1 requires "[a] driver system determining which of said network ports can be combined together to form a team having a common team network address to be used by external network logic." The hypothetical combination of McIntyre and Banga fails to teach or suggest this limitation. In particular, the Examiner stated on pp. 5-6 of the Office Action that McIntyre discloses this limitation at Fig. 3, col. 6, ll. 48-50 and col. 8, ll. 59-65. Applicants respectfully submit that the Examiner is mistaken.

The requirements of claim 1 differ from what is disclosed in the portions of McIntyre cited by the Examiner. Although these portions of McIntyre do appear to disclose the concepts of teaming NICs and exchanging network packets to determine the status/functionality of NICs, McIntyre does not teach determining

which network ports can be combined in a team (as required by claim 1). For example, it is entirely possible that instead of “determining” which NICs can be combined into a team, McIntyre pre-assigns (or “forces”) NICs into a team. In such a case, the “determining” requirement of claim 1 would be entirely omitted. Because McIntyre does not explicitly or inherently explain how NICs are teamed, it would be improper for the Examiner to automatically assume that the “determining” requirement of claim 1 is performed by McIntyre, especially because teaming can be performed in other ways besides the “determining” approach.

Further, although McIntyre teaches a driver that “determines the status of functionality of the receiving NIC(s),” this is not the same as a driver system that “determin[es] which of said network ports can be combined together to form a team,” as required by claim 1. As known to those of ordinary skill in the art, the mere fact that a NIC is functional, or that it is operating properly, does not mean that the NIC can be combined into a team with another NIC. For NICs to be teamed together, more is required than mere physical connectivity: there must be “true” or “full” connectivity between the different logical networks. One of ordinary skill in the art would recognize that the presence of full connectivity enables two or more NICs to directly communicate with each other in both directions (transmit and receive). For a group of NICs to be eligible to be teamed together, partial connectivity may not suffice. These teaming considerations cannot be validated with mere testing of physical connectivity, as disclosed in McIntyre. Thus, testing of physical connectivity as taught by McIntyre cannot constitute “determining which of said network ports can be combined together to form a team,” as required by claim 1.

Notwithstanding the foregoing arguments, it should be abundantly clear from a plain reading of McIntyre, col. 8, ll. 59-65, that McIntyre’s driver does not “determin[e] which of said network ports can be combined together to form a team,” as required by claim 1. Specifically, Applicants point to col. 8, l. 59 of

McIntyre. This line makes it clear that everything disclosed in col. 8, ll. 60-65 occurs between NICs that are **already** operating as a team: “**[w]hen two or more NIC ports are operating as a team, . . .**” (emphasis added). In other words, the exchange of packets between NICs described in lines 60-65 is not to determine which network ports can be combined to form a team, as required by claim 1, but is instead to verify that the status of NICs already in a team – that the NICs are still functioning properly.

In response to the foregoing arguments, the Examiner may submit that Banga teaches teaming and therefore Banga discloses the “determining” requirement of claim 1. However, just like McIntyre, Banga fails to explicitly or inherently teach that the determination requirement of claim 1 is fulfilled. The teaming disclosed in Banga could be performed in any of a variety of ways, so the Examiner must not automatically assume that Banga teams NICs as required by claim 1. Doing so would constitute the use of impermissible hindsight in violation of MPEP § 2145(X)(A). Because both McIntyre and Banga fail to explicitly or even inherently teach the determination requirement of claim 1, the hypothetical combination of McIntyre and Banga cannot and does not teach the determination requirement of claim 1. Based on the foregoing, independent claim 1 and dependent claims 2-13 are patentable over the hypothetical combination of McIntyre and Banga.

Independent claim 14 requires “a controller subsystem that operates the plurality of NICs, the controller subsystem determining which of said NICs are combinable as a team.” As explained above, the hypothetical combination of McIntyre and Banga fails to teach or suggest such a limitation. For at least this reason, independent claim 14 and dependent claims 15-20 are patentable over the hypothetical combination of McIntyre and Banga.

Independent claim 21 requires “means for determining which of said network ports can be combined together to form a team having a common team network address to be used by external network logic.” As explained above, the

hypothetical combination of McIntyre and Banga fails to teach or suggest such a limitation. For at least this reason, independent claim 21 and dependent claim 22 are patentable over the hypothetical combination of McIntyre and Banga.

Independent claim 23 requires “logic coupled to said ports, said logic determines whether said ports in said team continue to be eligible to be operated in said team.” As explained above, the hypothetical combination of McIntyre and Banga fails to teach or suggest such a limitation. For at least this reason, independent claim 23 and dependent claims 24-27 are patentable over the hypothetical combination of McIntyre and Banga.

Independent claim 28 requires “determining which of said ports may continue to be operated in said team and which of said ports, if any, are ineligible to be operated in said team.” As explained above, the hypothetical combination of McIntyre and Banga fails to teach or suggest such a limitation. For at least this reason, independent claim 28 and dependent claim 29 are patentable over the hypothetical combination of McIntyre and Banga.

III. NONSTATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

The Examiner rejected claim 1 on the ground of nonstatutory obviousness-type double patenting as obvious under claim 1 of McIntyre in view of Banga. Applicants traverse this rejection. Applicants’ claim 1 requires “the driver system determining which of said network ports can be combined together to form a team having a common team network address to be used by external network logic.” The Examiner admits on pp. 3-4 of the Office Action that claim 1 of McIntyre fails to require this limitation and, therefore, turns to Banga. However, as Applicants explained above, Banga fails to satisfy the deficiencies of McIntyre in regard to this limitation. For at least this reason, a nonstatutory obviousness-type double patenting rejection is improper and should be removed.

IV. CONCLUSION

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a

Appl. No. 10/620,208
Amdt. dated September 27, 2007
Reply to Office Action of July 5, 2007

particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the cited art which have yet to be raised, but which may be raised in the future.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

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